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October 4, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Notice of Ex Parte Meetings
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on October 3, 2002, Pantios Manias, Senior Vice President for Carrier Relations, Regulatory and Business Development, and Stephen Crawford, General Counsel, of El Paso Global Networks ("EPGN"); Jonathan Lee of the Competitive Telecommunications Association; and the undersigned met with Dan Gonzalez, in the office of Commissioner Martin, to discuss regulatory issues relating to the above-referenced dockets.

EPGN discussed its concerns in the Commission's triennial review proceeding and discussed some of the highlights of its comments and reply comments that filed in these proceedings. In particular, EPGN stressed the importance to its business operations in Texas of continued access to dark fiber unbundled network elements ("UNEs") and high-capacity loop and transport UNEs. EPGN expressed the view that requesting carriers in the markets EPGN serves would be impaired if competitors did not have access to dark fiber UNEs, because comparable facilities are not available as a practical matter from third parties, and self-provisioning in most cases is uneconomical due to the cost characteristics of deploying dark fiber.

EPGN pointed out that it has invested over $500 million to construct telecommunications facilities in Texas, including deploying equipment to light fiber UNEs, and in deploying its own fiber facilities where doing so is economically efficient. EPGN stressed that for its markets in Texas the overwhelming majority of the demand is for service to locations that it can only reach using the dark fiber it obtains from SBC.

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EPGN further noted that it would be economically infeasible to extend fiber facilities to most of its prospective customers due to the expense and delay inherent in constructing duplicative facilities (including, for example, the need to negotiate access to buildings and construct lateral facilities that duplicate the incumbent LEC's existing building entrance facilities).

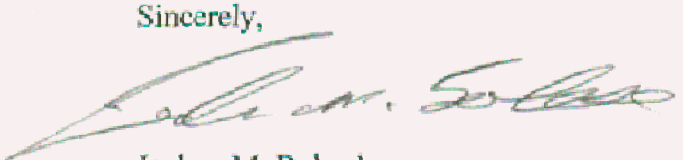
Even in those instances where EPGN uses SBC dark fiber, EPGN stressed that the vast majority of its costs are for purchasing, engineering and deploying the equipment to light the fiber (*i.e.* Dense Wave Division Multiplexers ("DWDM") and/or Add/Drop SONET Multiplexers), as opposed the initial nonrecurring charges for obtaining the UNE dark fiber or the monthly charges for using that UNE dark fiber. Thus EPGN is of the view that dark fiber is the UNE that is closest to 100% facilities based competition because the only element the ILEC provides is the unlit fiber, which is and always will be the most difficult and uneconomical piece of the network for competitors to duplicate.

EPGN also outlined difficulties it has experienced in obtaining parity access to dark fiber and other UNEs from SBC in Texas, and urged the Commission to strengthen its UNE rules to protect the availability of network elements on reasonable terms and on parity with the access available to the incumbent LECs, and discussed the Arbitration Award by the Texas Public Utilities Commission that addressed many of these issues.

EPGN provided the participant in the meeting with duplicate copies of the comments it has filed in these proceedings as well as other materials. These other materials, included with this letter, are a PowerPoint presentation and other documents EPGN used in its presentation.

Therefore, in keeping consistent with the Commission's rules, EPGN is filing an original and one copy with the Office of the Secretary.

Sincerely,



Joshua M. Bobeck
Attorney for El Paso Global Networks

Enclosures

cc: Daniel Gonzalez
Pete Manias
Stephen Crawford
Jonathan Lee

Caution, Competition Ahead

By James K. Glassman 9/23/02 09/23/2002

Just when nearly everyone had given up hope of breaking the monopoly in local telephone service, competition has suddenly blossomed, and consumers and small businesses around the country are beneficiaries.

The plan set by Congress in a law enacted six years ago is at last working. More Americans are choosing companies other than the Bells, the longtime monopolies, as their local carriers, and, as a result of the new competition, prices are falling and quality rising.

The Bush Administration, which earlier seemed to be toying with the idea of giving up on competition - both in local service and in high-speed Internet access, or broadband -- now has a success on its hands. So do members of Congress of both parties going into the mid-term elections. After all, there's nothing elected officials like to brag about more than policies that save money for consumers. And with telecom, they deserve bragging rights.

But the game isn't over. The chairman of the Federal Communications Commission, Michael Powell, has some important decisions to make, and at least one of the giant Bell companies is trying to use its clout to halt the progress. But, as Business Week put it, "If Powell abandons the approach of the 1996 law and gives the Bells the rules they want, he may well cut off competition just as it's getting good."

How good? By the end of June, thanks to a process called UNE-P, the Bell's competitors had signed up customers for 7.7 million telephone lines, a gain of 33 percent, in just six months. Just two and a half years ago, the competitors had fewer than a half-million lines.

UNE-P stands for "unbundled network element platform." It's telecom gobblydegook, but it's vital. The Telecommunications Act of 1996, passed overwhelmingly by both parties, allowed competitors, paying a reasonable price, to use UNE-P to hook up to the local Bell network. That network, of course, was built over a century by the original nationwide monopoly, American Telephone & Telegraph Co., with the help of government subsidies and protection. AT&T managed the lines in a kind of public trust.

With the AT&T breakup two decades ago, the local system was bequeathed to seven regional Bell monopolies (now, through mergers, just four) while AT&T went into the long-distance business.

Long distance was opened up to competition, with companies like MCI and Sprint getting their start by leasing AT&T's long-distance lines, then, after gaining a foothold, building their own facilities. The result was higher quality and lower prices - down 40 percent since 1992 alone, according to the FCC. The 1996 law applied the same leasing model - in this case called UNE-P - to local service, in hopes of gaining similar benefits from competition.

But, until lately, local competition hasn't happened - mainly because of lawsuits and foot-dragging by the Bells - and, as you would expect in a monopoly market, rates have risen and service deteriorated. Now, much of the underbrush has been cleared, and state public utility commissions are paving the highway to competition by setting sensible UNE-P prices.

Michigan led the way more than a year ago, and Illinois, New York, Indiana, New Jersey, California and Ohio have followed. The Bells' competitors have responded by offering service in these states and several others with hopeful prospects, and the Bells have countered,

scrambling to retain customers by cutting prices and boosting services.

The process is no mystery. It's called free-market competition, and it's at the heart of the economy philosophy of the Bush Administration - and of most members of Congress.

Here's a concrete example: In June, the Grand Rapids (Mich.) Press reported, "Pushed by a growing number of competitors, SBC Ameritech, the state's dominant local-phone provider, cut the price of its basic local-call plan by one-third and lifted the limits on local and toll calls in other plans." Savings for Michigan consumers: $26 million. In 1999, competitors had only 4 percent of Michigan's local lines. Today, they have about 15 percent.

Comments by executives from Verizon, Qwest and BellSouth indicate they can live with UNE-P. CEO Ivan Seidenberg, for instance, "assured investors that UNE-P wouldn't hurt Verizon's finances right now," according to *Communications Daily* on Sept. 10.

After all, as UNE-P lets competitors enter local service, the law (under Section 271) allows the Bells to get into long distance, which so far has provided the Bells with more than they have lost on the local side. In a recent report, Lehman Brothers noted, "BellSouth emphasized that their success in entering the long-distance market through the 271 approval process offer a considerable advantage over the UNE providers." BellSouth, by offering a bundle of local and long-distance services, believes it has an appealing package to sell customers, which "will obviate the need for a major change in UNE regulations."

But SBC Communications, which seems to have dropped the ball on developing the competitive local-plus-long-distance packages that BellSouth talks about, is screaming bloody murder and making extravagant claims about the damage UNE-P is doing.

Thanks to the mandated rates, complained Edward Whitacre, SBC's chairman, his company's financial situation is "a downward spiral" that "will lead to the ultimate demise of our network." But that's nonsense. Certainly, life is a lot easier when you're a monopoly, but recent reports by investment firms show that SBC - which is the regional Bell for the Midwest, West and Southwest and has investments in 25 phone companies internationally, from South Africa to Uruguay - is alive and well.

Among the top 30 companies listed in Fortune's annual survey, SBC was number-one in profit margin, earning 16 cents on every dollar in sales. The average company in the Fortune 30 earned less than 5 cents on the dollar.

In a recent presentation to stock analysts, Whitacre bragged about SBC's rising wireline profit margins - most recently 42 percent. In fact, all of the Bells have excellent prospects. As Value Line analyst David Reimer put it, Bell "stocks should be able to break out of their current funk, given the companies' significant market scale and ability to further pursue the more promising of growth avenues." Value Line, as of its latest report (July), rated SBC "A-plus" for "financial strength" and calculated SBC's return on capital at a hefty 17 percent, compared with an average of 4 percent for the industry.

Lehman Brothers told clients last month that the Bells are "expected to deliver strong free cash flow growth over the next five years" and rated SBC "outperform" (that is, expected to do better than the market as a whole). Of 23 analysts surveyed by Yahoo, 12 rate SBC a "strong buy" or "buy" and none rates it a "sell."

Value Line estimates that SBC's earnings will continue to rise this year to $2.45 a share - that's up from just 86 cents in 1986. SBC's cash flow is a whopping $18 billion, according to Value Line - considerably higher than that of giants like Microsoft, Wal-Mart and General Motors.

The objective of Whitacre and William Daley, the former chairman of Al Gore's presidential

campaign who is now SBC's president, is to get Congress or the FCC to pre-empt the states and jack up the rates that consumers pay. According to the Detroit Free Press, SBC is trying to frighten Michigan policymakers into raising rates by using one of the oldest tricks in the corporate playbook: threatening that the company will have to lay off some of its 16,000 employees in the state.

Again, that's nonsense. If SBC loses business to competitors, it might have to lay off workers. But, meanwhile, those same competitors will be *hiring* workers - perhaps the same people. In fact, if local service grows as competitive as long distance, then the total pie - that is, the amount of local business in general - will expand, and, overall, jobs should increase.

It is true, however, that SBC - and the other Bells - have a real fight on their hands. That's what competition is all about. And that's great for consumers. In July, SBC's Illinois subsidiary announced a major rate cut, and in August, SBC's Ohio subsidiary introduced "significant cost savings [for] approximately 96,000 small businesses."

AT&T, one of the Bells' new competitors on the local scene, expects to offer service to half of the Bells' residential customers by the end of this year, entering states like California and New Jersey. In New York, where Verizon was once a rock-solid monopolist, AT&T offers unlimited local calling for $19.95 a month. Consumer Reports quoted a study finding that, thanks to the new competition, consumers in the state reduced their bills by nearly $13 a month.

Judging from these results, Business Week is right to warn that changing to "a regulatory scheme that ensures rich profits for the Bells alone is likely to hit consumers in the wallet - and slow innovation even more."

The Bells have traditionally focused their attention on lobbying and lawyering rather than on innovation and customer service. Competition is a new and scary development for them, and their aim over the past six years has been to kill it off- not by offering cheaper and better products but by persuading politicians and filing lawsuits.

Lately, the Bells' arguments are growing threadbare. For example, they claim that UNE-P is only "synthetic competition." But the Bells currently provide long distance service to customers by leasing lines from incumbents in precisely the same process. Discounts to the Bells from companies like Sprint and AT&T range from 55 percent to 70 percent. (In fact, some securities analysts encourage the Bells to embrace the idea of leasing out their local lines as a source of extra income, rather than reflexively opposing the idea as a threat.)

In time, competitors plan to build their own local networks, thus developing what is called "facilities-based" competition. But, according to a recent report by the investment firm Stephens, Inc., "the FCC is likely to keep the current system, thus allowing CLECs [that is, the Bell competitors] to accumulate a customer base large enough so that competition can truly take hold. The 'build it and they will come' facilities-based approach has obviously not worked as well as planned. We believe the FCC will recognize this failure and allow the UNE-P CLECs to build enough scale so that a gradual transition to a facilities-based network can be done."

Let's hope so. Chairman Powell has a momentous decision to make. He has been wise to postpone action until he could see the lay of the telecom landscape. Thanks to actions on UNE-P by the states - with Massachusetts, Pennsylvania, Minnesota, Maryland and many others expected to follow leaders like New York and Michigan - competition is working at the local level.

But eternal vigilance is the price of telecom freedom. Some lawmakers on the Hill could try to insert language in appropriations bills that would gut the work of states that are setting wise UNE-P rates. The Bush Administration, which stands to benefit from this consumer-telecom success, must throttle any of these attempts, and it would be a disaster if Michael Powell, the

son of the Secretary of State, were to panic and overturn a major policy achievement for the White House.

In the end, it appears the Bells are going to have to compete - in long distance, broadband and local service - whether they like it or not. The winners in telecommunications will be entrepreneurs and innovators, not monopolists. Of course, the biggest winners of all are America's consumers and small business owners, who, in these tough economic times, are starting to enjoy the benefits of lower telecom rates and better services -- just as the advocates of competition in the Administration and Congress have been saying all along.

DARK FIBER: TEXAS SEES THE LIGHT

El Paso Networks LLC ("EPN") recently arbitrated the terms and conditions for its unbundled access to SBC's dark fiber in Texas with SBC's ILEC affiliate SWBT. In that proceeding, the arbitrators rejected SBC's attempts to curtail the availability of dark fiber, to restrict how UNE dark fiber could be used, to conceal information regarding dark fiber deployment, and to impose onerous restrictions on when dark fiber would be deemed available. These decisions are important considerations for the FCC as it considers arguments from the RBOCs suggesting that CLECs are no longer impaired without access to dark fiber. The evidence from Texas clearly shows that impairment remains. Further, the EPN Award reveals that SBC, by restricting access to dark fiber, has stifled the growth of competition over the last three years. Now that competition is beginning to take root it is critical that the FCC allow it to grow as envisioned by Congress when it passed the 1996 Act.

SUMMARY OF SIGNIFICANT POINTS TAKEN FROM TEXAS PUC REVISED AWARD IN THE ARBITRATION BETWEEN EPN AND SBC

- **CLECs in Texas are Impaired Without Unbundled Access to Dark Fiber**
- **Nondiscriminatory Access to UNE Dark Fiber Includes Access to Unspliced or Unterminated Fiber and the ILEC Must Splice or Terminate that Fiber for the CLEC ILECs Must Provide Access to All Loops**
- **CLECs May Access ILEC Dark Fiber at Existing Splice Cases**
- **Splicing or Terminating a Dark Fiber does not Constitute 'Construction' of a Network Element**
- **Access to UNEs is Meaningless Without Parity Access to Information Regarding the Location of Such UNEs**
- **Use Restrictions on UNE Dark Fiber are Unwarranted**

CLECs in Texas are Impaired Without Unbundled Access to Dark Fiber

The Arbitrators refuted SBC claims that EPN's proposals for access to UNE dark fiber to provide wholesale services violated the policies and intent of the 1996 Act. SBC had argued that the Special Access market was mature and competitive and thus CLECs such as EPN were not impaired without access to SBC dark fiber to serve that market. SBC contended that the market had changed since the Texas PUC issued its Waller Creek Award in 1999, but the PUC disagreed and upheld EPN's ability to use UNEs including dark fiber to provide wholesale services to other telecommunications carriers. The PUC's 1999 Waller Creek Award made important determinations, based on testimony and other evidence, that competition would benefit if CLECs could use UNEs including dark fiber to provide wholesale telecommunications services to other telecommunications carriers.

The 1999 Waller Creek Reconsideration Order stated that CLECs could use dark fiber and other UNEs to provide telecommunications service to other telecommunications carriers including IXCs that were not serving the end user, because otherwise EPN would be "precluded from offering what may be a valuable and competition-enhancing service." Docket 17922 & Docket 20268, *Order On Reconsideration Of Second Order On Appeal Of Order Nos. 9 And 2,* Tex. PUC, June 1999 at 10.

Revised Arbitration Award at 23-24 (footnotes omitted):

"The Arbitrators find that the issue of whether EPN can use UNEs in combination with its own facilities to provide wholesale services was decided by the Commission in the Waller Creek Arbitration. In Waller Creek, the Commission specifically concluded that Waller Creek "can use UNE dark fiber (or other UNEs) to carry traffic for any other telecommunications provider regardless of who is serving the retail, local end use customer." The Arbitrators find that SWBT has not provided sufficient argument or evidence to justify a finding contrary to the Commission's holding in Waller Creek. Therefore, the Arbitrators find that EPN may continue to purchase UNEs and use them, alone or in combination with their own facilities, to provide wholesale services to other providers."

EPN provided evidence that without access to unspliced dark fiber, EPN would be impaired in its ability to provide service. Between 1999 and 2002 almost 60% percent of all EPN orders for dark fiber loops required splicing. Absent SWBT's obligation to splice, EPN would have been unable to serve those customers. The Arbitrators rejected SBC's rationale for denying EPN access to unspliced or unterminated dark fiber. The Arbitrators reached a similar conclusion regarding unterminated dark fiber.

Revised Arbitration Award at p. 139-140 (footnote omitted):

With regard to instances where UNE dark fiber is deployed as part of SWBT's network, but not spliced end-to-end, the Arbitrators find that SWBT has an obligation to provide that unspliced UNE dark fiber to EPN and splice it upon request; however, EPN must pay SWBT all TELRIC costs associated with such splicing activities for the requested route. The Arbitrators believe that EPN would suffer if SWBT chose to provide only that UNE dark fiber which is completely spliced from the central office to the customer premises.

Revised Award at 133

Further, the Arbitrators clarify that the UNE dark fiber that SWBT is obligated to provide to EPN does not necessarily need to be terminated at both ends of the route. The Arbitrators believe that EPN would be harmed if SWBT chose to provide only that UNE dark fiber which is terminated at both ends of the route. SWBT certainly has the right to deploy its dark fiber in a manner consistent with its network deployment policies, but the Arbitrators do not believe that SWBT's business decisions should limit EPN's ability to obtain UNE dark fiber from SWBT. EPN offered evidence that it was impaired without access to dark fiber. EPN further noted that both EPN and SBC use fiber to build rings to serve its customers and these rings must have two completely diverse paths. SBC argued that only the fiber between the customer and the SBC Serving Wire Center for that customer should be available as a UNE. The Arbitrators rejected SBC's arguments and found that that SBC's fiber between a customer location and a SBC central office other than the customer's serving central office was UNE Dark fiber. The Arbitrators recognized that EPN would be impaired without unbundled access to this fiber, and declined to accept SBC's tortured explanation for denying EPN access to this fiber.

Revised Award at 133 (footnotes omitted)

SWBT argued that the Commission's CoServ Arbitration Award only applies to dark fiber SWBT deems as the primary route. The Arbitrators disagree. In the CoServ Arbitration Award, the Commission clarified the definition of dark fiber to aide in the equitable access to UNE dark fiber. In any instance where dark fiber exists from a wire center to the closest available dark fiber UNE within a proximity of a customer premise, the Arbitrators find that SWBT is obligated to provide that UNE dark fiber to EPN or any requesting CLEC, consistent with the 25% spare fiber rule. The Arbitrators also find that SWBT is obligated to provide UNE dark fiber to EPN, where technically feasible, when the route involves more than one central office. The Arbitrators do not believe this requirement would pose any harm to SWBT given the fact that SWBT is protected by the dark fiber revocation provisions contained in the ICA.

Nondiscriminatory Access to UNE Dark Fiber Includes Access to Unspliced or Unterminated Fiber and the ILEC Must Splice or Terminate that Fiber for the CLEC

The Arbitrators rejected SBC's argument that unspliced or unterminated fiber is not available as a UNE. The Arbitrators required SBC to make such fiber available and splice and terminate such fiber upon EPN's request because SBC performs that identical function for itself on a regular basis.

Revised Award at 133 (footnotes omitted).

Further, the Arbitrators clarify that the UNE dark fiber that SWBT is obligated to provide to EPN does not necessarily need to be terminated at both ends of the route. The Arbitrators believe that EPN would be harmed if SWBT chose to provide only that UNE dark fiber which is terminated at both ends of the route. SWBT certainly has the right to deploy its dark fiber in a manner consistent with its network deployment policies, but the Arbitrators do not believe that SWBT's business decisions should limit EPN's ability to obtain UNE dark fiber from SWBT.

Revised Award at 133-134 (footnotes omitted)

SWBT argued that if it were required to build, splice or rearrange facilities at the request of EPN, capacity would be stranded, service to customers would be delayed, and SWBT's ability to meet its carrier of last resort obligations would be impaired. The Arbitrators disagree and find that SWBT provided no convincing evidence supporting its claims that service to customers would be delayed and its ability to meet its carrier of last resort obligations would be impaired. Additionally, the Arbitrators again rely on the 25% spare fiber rule which essentially precludes the possibility of stranded capacity of dark fiber.

The Arbitrators find that EPN is similarly not asking SWBT to construct additional facilities. EPN is only asking for access to fiber that is already there. The Arbitrators agree with EPN that termination does not require deployment of any new capital facilities or new construction. The Arbitrators do believe, however, that termination involves field work which SWBT already does on a daily basis. Therefore, the Arbitrators find no harm in requiring SWBT to terminate dark fiber for those facilities that are already in existence.

CLECs May Access ILEC Dark Fiber at Existing Splice Cases

EPN asked that the arbitrators require SBC to splice EPN fiber to SBC fiber at existing splice points upon EPN's request. This allows EPN to access SBC backbone fiber and build its own lateral to serve a customer where SBC has no fiber to that customer or has exhausted all capacity. In such circumstances the economics may justify EPN building the lateral from the SBC backbone to the customer but would not justify duplication of SBC's exiting backbone facility. The Arbitrators agreed with EPN and rejected SBC's position.

Revised Award at p. 162 (footnotes omitted)

The Arbitrators find that SWBT has not supported its argument that the access that EPN requests is not technically feasible. It appears to the Arbitrators that SWBT has artificially extended EPN's request to mean that EPN is seeking access to points in the network that could possible cause undue harm to SWBT and CLECs alike. The Arbitrators do not read EPN's request to mean that it seeks access at any point. The Arbitrators find that EPN is seeking the ability to have its own fiber spliced by SWBT technicians to SWBT dark fiber UNEs at existing

splice cases and termination points. SWBT argued that dark fiber cannot be accessed at a splice case because splice cases are inaccessible points in SWBT's network. However, the Arbitrators find insufficient persuasive evidence from SWBT demonstrating how or why splice cases are inaccessible points and that access to these points is technically infeasible.

Splicing or Terminating a Dark Fiber does not Constitute 'Construction' of a Network Element

The ILECs contend that the Act does not require them to construct new UNEs for CLECs use. The ILECs also use that narrow limitation on their unbundling obligation to deny CLECs meaningful access to UNEs in manner that actually permits the CLEC to use the element to serve customers. In the EPN arbitration the Texas PUC rejected SBC's argument that splicing and terminating dark fiber was construction of a new element.

Revised Award at 133 (footnotes omitted)

SWBT argued that it should not be required to construct dark fiber for use as a UNE. The Arbitrators do not believe that obligating SWBT to provide UNE dark fiber as described above would require SWBT to construct dark fiber for EPN for use as a UNE. In the CoServ Arbitration Award, the Arbitrators found that terminating dark fiber does not constitute constructing new transport facilities. Additionally, the Arbitrators also found that CoServ was not asking for SWBT to construct additional facilities; CoServ was only asking for access to dark fiber in those facilities that SWBT has already deployed.

Revised Award at 133 (footnotes omitted)

The Arbitrators find that EPN is similarly not asking SWBT to construct additional facilities. EPN is only asking for access to fiber that is already there. The Arbitrators agree with EPN that termination does not require deployment of any new capital facilities or new construction. The Arbitrators do believe, however, that termination involves field work which SWBT already does on a daily basis. Therefore, the Arbitrators find no harm in requiring SWBT to terminate dark fiber for those facilities that are already in existence.

Access to UNEs is Meaningless Without Parity Access to Information Regarding the Location of Such UNEs

Under the parties existing agreement EPN has the ability to view SBC's physical maps that show the location of SBC's fiber network. Despite this ability SBC continually skews the ordering process forcing EPN to submit a series of multiple queries, each for a $250 fee in order to determine whether fiber is available. EPN asked the Commission to clarify that SBC's responses to EPN provide EPN with all available information regarding the specific customer location rather than requiring EPN to submit a series of such request and play hide and seek to get UNE

dark fiber. In addition, the arbitrators rejected SBC's position that it could hide from CLECs the location of its fiber under the guise of proprietary information or national security.

Revised Award at 40-41 (footnotes omitted)

The record reflects that SWBT has the capability of providing detailed information in response to a request for facilities to be used at a particular location. Prior to November 2001, SWBT provided EPN with a spreadsheet with the information regarding all the facilities in an area in response to EPN facility checks. SWBT would tell EPN "We don't have fiber in this building, but we have fiber in these other buildings." The record further reflects that SWBT provides this level of service to itself or its retail personnel. EPN's witness Galvan testified as to SWBT's facility check practice. Mr. Galvan testified that SWBT OSP engineers develop a knowledge of facilities in their assigned areas, including planned and work in progress, utilizing all resources to verify facilities. Therefore, the Arbitrators find that in response to an EPN facility check request, SWBT's engineers will detail any and all facilities in or near the building that can be used for possible service to the customer. The Arbitrators further clarify that the finding herein requires SWBT to provide EPN with information regarding such facilities, even when that information may be solely available due to the knowledge of the SWBT OSP Engineer(s).

In the case of facilities within a multi-tenant building, if fiber does not exist to the floor specified by EPN, but is available elsewhere in the building, SWBT will indicate where in the building facilities are available rather than responding that there are no facilities available.

The Arbitrators are not persuaded by SWBT's arguments and evidence regarding SWBT's assertion that it should not be required to provide network information for security and proprietary marketing concerns. SWBT argued that to release all fiber demarcation locations in a building discloses customer proprietary information (CPNI), but SWBT does not explain adequately how it makes the leap from network/facility information to CPNI. EPN is attempting to buy unbundled fiber and cannot reasonably do so without knowledge of where such fiber exists. The Arbitrators find a distinction between facility information and proprietary customer information. EPN is neither asking for, nor receiving, SWBT marketing information, but is granted the requisite unbundled facility information. The Arbitrators find unconvincing SWBT's explanation regarding security concerns over the release of facility routing information. SWBT very simplistically stated that "if a person knows where that cable is, they can certainly access it. They can cut communications to hospitals, to police stations, to – you know, cut your 911 service very easily if they know that route and path." Although security is a valid concern, the Arbitrators do not find that it justifies restricting CLEC access to network information under these circumstances. The Arbitrators find that SWBT may require CLECs to provide evidence that the CLEC has instituted an appropriate process for security clearance for the CLEC's personnel that handle information related to SWBT's cable routing.

Revised Award at Page 75

The Arbitrators also contemplate the scenario where an EPN engineer may require the assistance of a SWBT engineer to gain access to a part of SWBT's network design. In this scenario, the Arbitrators do not consider this type of assistance to be of the "engineering" variety. SWBT certainly is within its own right to restrict access to its network; however, EPN must be allowed an equitable opportunity to do its own engineering work given the fact that SWBT is not contractually obligated to provide engineering assistance to EPN. Therefore, the Arbitrators also find that SWBT must allow EPN engineers equitable access to SWBT's network information in lieu of being contractually obligated to providing engineering assistance to EPN.

ILECs Must Provide Access to All Loops

SBC refuses to provide EPN unbundled access to loop facilities unless those facilities connect the customer to the customer's SBC-designated serving wire center. SBC coined the phrase "Route Other Than Normal" or "ROTN") to describe such loops. SBC claims that such facilities are not unbundled loops. SBC will however allow EPN to access such loops if it also obtains a loop between the customer and the SWC. Further, SBC refuses to splice dark fiber on such loops even while it splices dark fiber on loops between the customer and the SWC. The arbitrator rejected SBC's attempt to create a distinction among loops based on SBC's designation of the wire center, and rejected the SBC coined phrase of ROTN.

Revised Award at 36 (footnotes omitted)

The record reflects that there are instances in SWBT's own network where SWBT, for its own purposes, has deployed fiber facilities between a customer premise and a wire center other than that customer's pre-defined, geographic wire center. To the extent SWBT has facilities that route from a local central office to a customer's premises, this facility is therefore by definition, a loop. SWBT's concept of route other than normal (ROTN), is therefore irrelevant in the determination of whether a facility is a loop.

Use Restrictions on UNE Dark Fiber are Unwarranted

Since 1999 SBC has sought to impose onerous use conditions on CLEC use of dark fiber, claiming that CLECs cannot use dark fiber to provide wholesale service to other telecommunications carriers. As discussed above the Texas PUC rejected this contention in 1999 and affirmed that ruling in the EPN Award.

TELRIC PRICES: MYTH & REALITY

WHAT IS A TELRIC PRICE?

A TELRIC price compensates RBOCs when they are required to lease their facilities to competitors. TELRIC prices are set every three to five years in negotiations and, if those fail, by regulators.

TELRIC prices *assume* that leased facilities are 100% brand new -- even though the RBOCs *actually* run a network that is mostly decades old and has been paid for by ratepayers.

WHY IS A TELRIC PRICE THE RIGHT PRICE?

A TELRIC price is the right price because it:

- Promotes facilities-based competition where new entrants can build facilities cheaper than the RBOCs.
- Prevents inefficient duplication of networks.
- Compensates RBOCs for use of their facilities at prices -- set, however, by regulators -- consistent with prices in competitive markets.
- Protects RBOCs against getting stuck with excessive amounts of underutilized facilities.
- Provides a predictable and consistent standard necessary for planning by both RBOCs and CLECs.

IS A TELRIC PRICE LEGAL?

Yes. The U.S. Supreme Court just recently -- May 13, 2002 -- confirmed that the Federal Telecommunications Act of 1996 gives the FCC the authority to require that state commissions set TELRIC prices for elements the RBOCs lease to CLECs.

WHY NOT LEAVE LEASE PRICES UP TO THE MARKETPLACE?

Bad idea. The RBOCs do not want to lease to competitors. Given that the RBOCs control the bottleneck networks to which CLECs need access, RBOCs would *raise lease prices* for their facilities so high that CLECs could not afford them. This would kill any prospect of local competition.

TELRIC PRICES: MYTH & REALITY (*Cont'd*)

MYTH: **COMPETITORS ARE GETTING FACILITIES ON THE CHEAP**

REALITY: **NOT TRUE**

Much of the RBOCs' networks is decades old and often has largely been paid for by ratepayers. Yet, TELRIC prices assume that facilities are 100% new and have never been paid for. This is a good deal for the RBOCs. In fact, TELRIC prices are often higher than the RBOCs' "real" costs and are a windfall for the RBOCs -- though the RBOCs will never admit this in public!

Examples of when RBOCs earn windfall revenues:

- **RBOCs' *empty* central office spaces find a new purpose and earn RBOCs hundreds of millions of dollars in revenue.**

  RBOCs had many empty spaces (basements, floor space, closets) in their central offices. These spaces became empty in the 1980's and 1990's as newer central office equipment and switches became much smaller and replaced bulky older ones. Those spaces gathered dust, were used for storage or as overflow for administrative tasks. After the Act of 1996, many of those empty spaces have been leased out to CLECs and earn RBOCs unexpectedly *hundreds of millions of dollars*.

- **RBOCs' local loops are mostly decades-old copper cables that have in good part been paid for by ratepayers -- CLECs are paying TELRIC prices *as if* they were receiving brand new state-of-the-art facilities.**

  At least 80% of the RBOCs local loops are copper cables that were placed decades ago (many may be 40 or more years old.) *Those older loops have often already been paid for by ratepayers*. When CLECs lease loops from RBOCs, they are almost always those old copper loops. Yet, CLECs have agreed to pay lease prices as if they were getting newly placed, state-of-the-art facilities. The difference between the new price and cost of old or paid-for facilities is a windfall to the RBOCs.

TELRIC PRICES: MYTH & REALITY (*Cont'd*)

MYTH: **TELRIC DOES NOT INCLUDE ENOUGH PROFIT**

REALITY: **NOT TRUE**

TELRIC prices provide RBOCs a "reasonable" profit on facilities leased to CLECs. In fact, this is a requirement under the ACT of 1996 (Section 251) -- it's the law!

But better yet, under TELRIC prices, RBOCs are *guaranteed* a profit. Now these days most business would die for such a guarantee. Surely, there is no federal law that guarantees CLECs a profit.

MYTH: **TELRIC DISCOURAGES FACILITIES-BASED DEPLOYMENT**

REALITY: **NOT TRUE**

CLECs have attracted large sums of money from investors and have invested over $55 billion in their networks since the ACT of 1996. The argument that TELRIC discourages investments is simply not credible. It was also rejected by the U.S. Supreme Court:

> "A regulatory scheme that can boast such substantial competitive capital spending [$55 billion] in four years is not easily described as an unreasonable way to promote competitive investment in facilities."

MYTH: **ALTERNATIVE FACILITIES ARE AVAILABLE SO THERE IS NO NEED FOR REGULATORS TO SET TELRIC PRICES FOR LEASED FACILITIES**

REALITY: **NOT TRUE**

There are no alternatives to the RBOCs' facilities for CLECs that want to serve broad segments of local markets. If there were, prices would surely drop below TELRIC and the expensive and cumbersome regulatory and legal battles would stop. CLECs would simply buy from companies other than RBOCs.

COMMENTARY

By Catherine Yang

THE DECISION THAT COULD RESHAPE TELECOM

With 500,000 jobs and $2 trillion in market valuation lost in the telecom bust, it's natural that the hunt for scapegoats is nearly as fierce as the search for solutions. That's why Federal Communications Commission Chairman Michael K. Powell is under rising pressure to move fast. Indeed, Powell is close to acting on the agenda he sketched when he took the job last year. His idea is to cut back regulations by the end of the year on established local phone companies, mainly the former Bells. This could give them a clearer path to profits, he says, and spur a much-needed investment binge. To Capitol Hill Republicans worried about midterm elections, delay could cost votes back home. "I consider him a close friend, but deregulation can't wait," says House Commerce Committee Chairman W.J. "Billy" Tauzin (R-La.).

But speed is no substitute for smarts. The problem with the much-maligned Telecom Act of 1996 may well be that it hasn't really been given a chance —until this year. The Act called for the Bells to lease their lines to rivals, creating competition in local markets. In exchange they could sell long-distance service. The idea: accept short-term regulation to make much broader deregulation possible.

For years, though, the Bells protected the status quo through regulatory and legal roadblocks. But now that AT&T and other rivals have finally found a way to compete with the Bells, the results are promising. If Powell abandons the approach of the 1996 law and gives the Bells the rules they want, he may well cut off competition just as it's getting good.

Why are the outsiders winning? From California to New York, state regulators are finally applying the 1996 Act more aggressively. Increasingly, challengers can lease Bell lines at a low enough rate to provide service and make money. Over the past two years, AT&T has introduced local service in eight states, serving 1.5 million customers. And rates are coming down. In Michigan, incumbent Bell SBC Communications Inc. has shaved local rates 33% since February, when AT&T plowed into the market. AT&T is racing to extend this service nationally, with an eye to building its own network within four years. "Hopefully, the FCC won't tamper," says AT&T Chairman C. Michael Armstrong.

FIXING A LAW THAT MAY NOT BE BROKE

FCC Chairman Michael Powell faces pressure to ease regulations placed on Baby Bells by the Telecom Act of 1996. The argument: As long as the Bells must lease local lines to rivals at steep discounts, they'll postpone needed broadband investments.

OPPONENTS SAY:

- State by state, competition in local markets is finally picking up. AT&T is leading the charge.
- Help from the FCC will allow the Bells to retain control of the industry, stifling competition.
- If competition withers, cash-strapped Bells are unlikely to make big investments anyway.

For Powell, son of Secretary of State Colin Powell, the pressure to act is immense. The telecom industry has imploded since he took office in January, 2001. And the Bells argue that network sharing discourages investment. They say they won't invest in massive fiber-optic upgrades, wiring broadband to millions of American homes, if they have to share these networks with competitors at cut-rate prices. BellSouth Corp. says it dropped $85 million worth of planned spending to upgrade its broadband network this year because of network-sharing rules. And Powell, who declined to comment, is correct that competition will eventually come from wireless companies and satellite-based service providers.

For now, however, Powell's plans threaten to create oligopolies. In local markets, the Bells would again reign supreme. In broadband, the Bells, with their digital-subscriber-line services, would likely divvy up the market with cable companies. "What Powell calls deregulation, I call remonopolization," says H. Russell Frisby Jr., president of the Competitive Telecommunications Assn., a group of Bell rivals.

Sadly, a regulatory scheme that ensures rich profits for the Bells alone is likely to hit consumers in the wallet—and slow down innovation even more. Consider recent history. Today, broadband is available to 80% of U.S. households, but less than 20% have signed up for it. Why? Experts say high prices are keeping consumers from embracing it en masse. And prices are high, in part, because lax early enforcement of the 1996 Act helped snuff out competition. Startups had to lease lines at sky-high rates, making it nearly impossible to earn a profit. This turned Bells and local cable companies into the only broadband players in town.

Powell's approach would enshrine this cozy arrangement, not fix it. "When you have a duopoly, you don't have aggressive competition on price," says Charles S. Golvin, a broadband analyst at Forrester Research Inc. And if Powell's reforms drive prices up, many of the same politicians who are clamoring for deregulation will be pounding on his door again, calling for price relief.

Yang covers telecommunications from Washington.

DAVID BURNETT/CONTACT

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El Paso Global Networks Company

Regulatory Briefing

El Paso Corporation

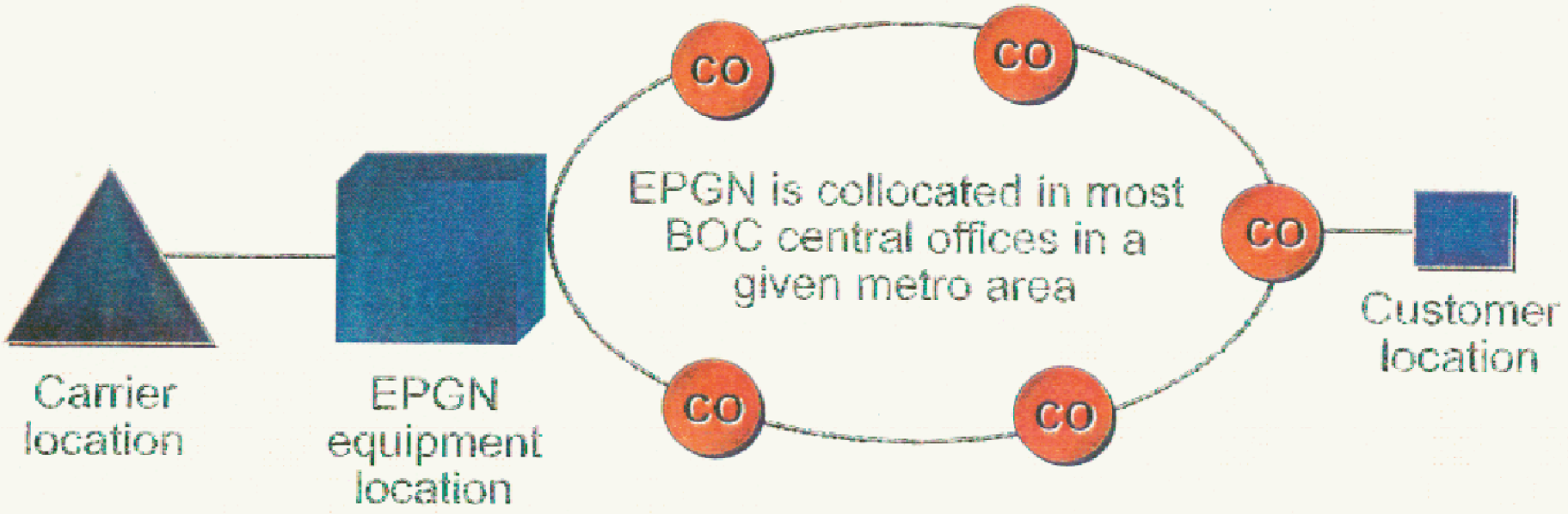
El Paso Global Networks is a wholly owned subsidiary of El Paso Corporation

- North America's leading provider of natural gas services
- Vertically integrated from natural gas production to transportation, trading, and power generation
- Strong asset base supporting successful asset-driven business strategy

El Paso Global Networks Overview

- El Paso Global Networks (EPGN) is a wholesale provider of high speed bandwidth in Texas (Dallas, Ft. Worth, Houston, San Antonio, and Austin)
- EPGN has invested $500 MM in telecom operations to support our Texas network
- EPGN is collocated in over 120 SBC (Texas) Central Offices (CO) that access 80% of market
- As a "hybrid carrier" EPGN:
  - Utilizes dark fiber (deployed and unused fiber) from SBC and lights it with EPGN owned and operated equipment
  - Builds company-owned fiber facilities in dense metropolitan markets
  - Provides high capacity wholesale access to carriers seeking alternatives to the Bell Operating Company (BOC)

EPGN's Metro Alternative to the BOC



Broadband Regulation Thoughts

- BOCs do not need relief to encourage broadband availability
  - 60–80% of BOC's customers have DSL available
  - Pricing and content are the issue, not broadband availability
  - Competition drives low prices, good content and ubiquity
- Proposed Rulemakings should **not** effect current ILEC network unbundling requirements

Unbundled Network Elements (UNEs)

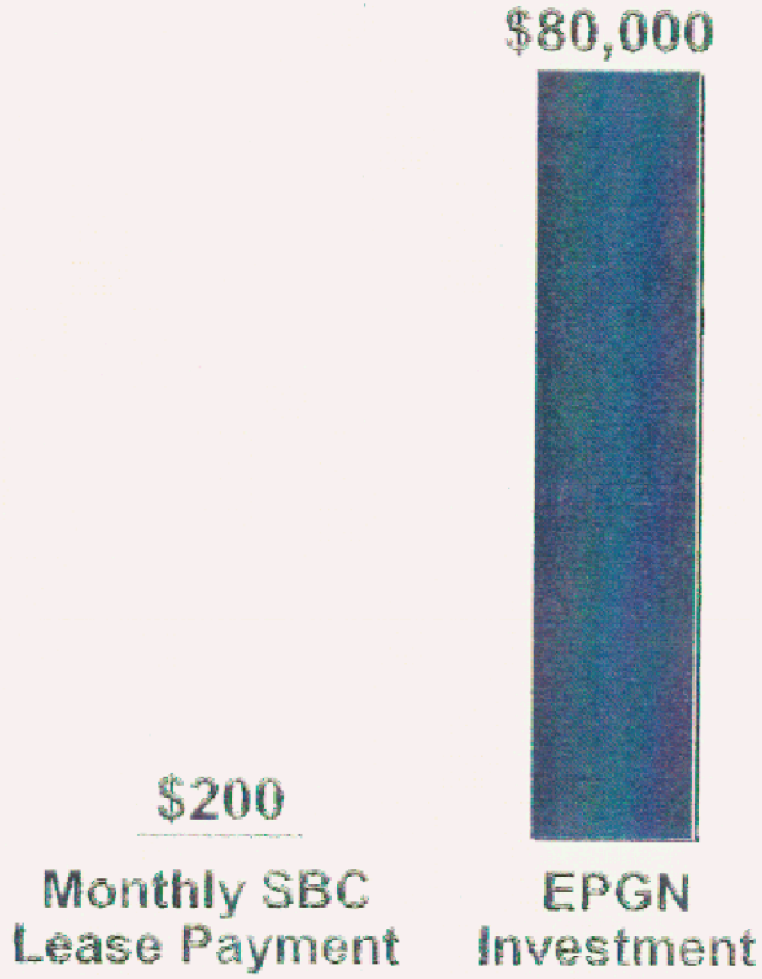
- UNEs utilize **excess** BOC capacity
- High capacity loops and transport must stay unbundled as UNEs to allow competition
- Parity for BOC competitors should be enforced
  - Network and information accessibility
- Wholesale competition has shown to be vital
  - Retail competitors need more than one supplier
- BOC monopoly control over metro routes is key bottleneck
- Intermodal competition is virtually non-existent
- Dark fiber and other UNEs require major capital investment and should be protected

Dark Fiber UNEs

- Requires the greatest capital investment from the CLEC
- Dark Fiber UNEs cannot exist if BOCs are not required to splice (just like DSL loop conditioning)—Supported by several states
- BOCs should not be allowed to deny CLECs the ability to offer diverse/redundant routes to their customers
- Require "network neutral" engineering environment

Dark Fiber UNEs Require Large Capital Investment

Example of 3-mile OC-12 loop



TELRIC: The Right Price

- TELRIC is flexible and can be adjusted
- TELRIC provide the BOC a "reasonable" profit
- There is no alternative to the BOC facilities for CLECs that want to serve broad segments of the local market
- Prevents inefficient duplication of networks
- Much of BOC's networks are decades old and often have been largely paid for by ratepayers
- Promotes facility-based competition

Recommendations

- EPGN needs regulatory certainty
  - Affirm that the Telecom Act and current FCC regulations need time to work
  - Enforce the Telecom Act and FCC regulations
- Reaffirm that CLECs are impaired without dark fiber and high capacity loop and transport UNEs
- Stop BOC use restrictions on UNEs to enable wholesale and retail competition to thrive
- Reaffirm that TELRIC methodology provides flexibility and proper return on capital

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